IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 132 of 1985

For Approval and Signature:

Hon'ble CHIEF JUSTICE MR DM DHARMADHIKARI
and
Hon'ble MR.JUSTICE A.R.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

COMMISSIONER OF INCOME-TAX

Versus

NIRMALA BAKUBHAI FOUNDATION

Appearance:

MR Akil Qureshi with Mr MANISH R BHATT for Petitioner

Mr R.K.Patel and Mr. B.D Karia for the respondent

CORAM : CHIEF JUSTICE MR DM DHARMADHIKARI
and
MR.JUSTICE A.R.DAVE

Date of decision: 21/09/2000

ORAL JUDGEMENT

Following questions of law have been referred at the

instance of the revenue under section 256 (1) of the Income tax Act, 1961, for our opinion:

(1) Whether on the facts and in the circumstances of the case, the Income tax Appellate Tribunal has not erred in law in holding that the interest received on fixed deposit from Shahibag Entr.Pvt.Ltd was not covered under section 13 (2) (h) and 13 (2)(a) of the Income tax Act, 1961 .

(2) Whether on the facts and in the circumstances of the case, the Income tax Appellate Tribunal has not erred in law in holding that contribution of Rs. 3,10,424/- made to B.M.Institution was an application of income of the trust ?

(3) Whether on the facts and in the circumstances of the case, the Income tax Appellate Tribunal has not erred in law in holding that exemption under sections 11 and 12 of the Income tax Act,1961 is applicable on interest income and the amount contributed to B.M.Institute?

Learned counsel appearing for the revenue and the assessee agree that the questions raised are covered by the Division Bench decision of this court in the case of the same assessee for the assessment year 1978-79 . The judgment is reported in 226 ITR 394 (CIT vs. Nirmala Bakubhai Foundation). All the three questions have been answered in favour of the assessee and against the revenue.

For the assessment year in question, we answer the questions in favour of the assessee and against the revenue.

Reference is accordingly disposed of but with no order as to costs.

(D. M.Dharmadhikari,C.J.)

(A. R. Dave,J.)

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